

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
MARITIME ADMINISTRATION

NOTIFICATION OF ASSISTANCE APPROVAL
(COOPERATIVE AGREEMENT)

PROJECT NUMBER: DTMA1H04005

**TITLE: Marketing Plan for National Water Highway System and Seminar
through Heartland Intermodal Partnership**

Phase 1

EFFECTIVE DATE: **Sep 13, 2005**_____

TOTAL AMOUNT OF THE AGREEMENT: _____

ESTIMATED FEDERAL FUNDING: **\$27,700**

CURRENT FEDERAL OBLIGATION: **\$22,500**

OBLIGATION DATE: **September 10, 2004**

MARAD APPROPRIATION DATA: **4750 104 010 180000 0PH002 2523
11N46573**

This Agreement is entered into between the United States of America, hereinafter called the Government, represented by the Maritime Administration, and the Recipient, Inland Rivers Ports and Terminals, Inc., as defined in Article 1 pursuant to and under U.S. Federal law.

The parties to this Agreement execute it by signing in the spaces provided below, as evidence and in acknowledgment of their intention to observe all the provisions hereof.

FOR THE RECIPIENT:

/Signed/
(Signature)
Diedre McGowan, Exec Dir, IRPT
(Name & Title)
(Date)
Sep 10, 2004

FOR THE UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
MARITIME ADMINISTRATION:

Wayne W. Leong
(Signature)
Wayne Leong, Contracting Officer
(Name & Title)
(Date)
Sep 10, 2004

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ATTACHMENTS AND ENCLOSURES

Attachment 1 - Statement of Work

Attachment 2 - Certifications and Representations

(1) Appl. For Federal Assistance, SF-424

(2) Financial Status Report Form, SF 269

ARTICLE 1 - PARTIES

This COOPERATIVE AGREEMENT (Agreement) is entered into by and between the United States of America represented by the Maritime Administration (MARAD), and Inland Rivers Ports and Terminals, Inc. (IRPT), herein after also referred to as the Recipient.

ARTICLE 2 - AUTHORITY

MARAD enters into this Agreement on the authority contained in the Merchant Marine Act of 1936, as amended (46 U.S.C. Appx. 1101, 1119 and 1120 and Section 207, of 46 U.S.C. Appx. 1117) pertaining to the entry into and performance of agreements and other transactions with public and private agencies, and the authorizations necessary for research and development activities.

ARTICLE 3 - SCOPE OF THE AGREEMENT

Phase 1

The Agreement will be utilized to facilitate cooperative research and development of a plan to market the National Water Highway System as a viable transportation alternative. This project will identify and propose solutions to impediments to increased market share; specific market niches; container-on-barge options; and appropriate media vehicles. This agreement is also used to support development of a cooperative seminar through the Heartland Intermodal Partnership.

The **Statement of Work (Attachment 1)**, defines the scope of the entire project and defines the portion in which Federal funding will be utilized. All deliverable Technical Reports will address the entire project.

It is recognized that as the project develops, this agreement and statement of work can be revised as necessary by a "modification" document.

ARTICLE 4 - DEFINITIONS

As used throughout this Agreement, the following terms shall have the meaning set forth below:

1. The term "head of the agency" or "Secretary" as used herein means the Secretary, the Under Secretary, any Assistant Secretary, or the Maritime Administrator or Deputy Maritime Administrator of the Department of Transportation; and the term "duly authorized representative" means any person or persons or board (other than the Agreement Officer) authorized to act for the head of the agency.

2. The terms "Agreement Officer" and/or "Agreement/ Contracting Officer" means the person executing this Agreement on behalf of MARAD, and any other employee who is a properly warranted Federal Contracting Officer.

3. Except as otherwise provided in this Agreement, the term "subcontracts" includes purchase orders.

4. The term "MARAD" means the Maritime Administration.

5. The term "Recipient" means the commercial organization(s) participating in and legally responsible for this Agreement.

6. The term "subcontractor" means a contractor to the Recipient and all tiers of subcontractors thereunder.

7. The term "Project Partners" refers to the Recipient's partners in the agreement.

ARTICLE 5 - REPORTING REQUIREMENTS

Phase 1

The Recipient shall provide the following reports to the Government:

1. Financial Status Report, SF-269, shall be submitted to the Agreement Officer every three months during Agreement performance and upon completion of the Agreement. Each report shall be submitted within 30 days after the conclusion of the reporting period.

2. Interim Technical Progress Reports shall be submitted to the Agreement Officer and the Agreement Officer's Technical Representative on the marketing plan development every three months. Interim Technical Progress Reports shall include progress to date, data collected, a statement of preliminary conclusions and schedule projections. Progress reports shall be updated at end of each calendar quarter by e-mail, with MARAD option to accept updates by telephone messages.

3. A Final Project Report shall be submitted for review and approval within one year; one (1) copy to the Agreement Officer and one (1) copy to the Agreement Officer's Technical Representative.

4. In addition to any other financial reports provided or required, the Recipient shall notify the Agreement Officer if any

contribution from a Project Partner is not made as required and the Recipient's plan of action regarding such contribution.

ARTICLE 6 - MEETINGS

1. The Agreement Officer's Technical Representative and any other Government personnel deemed appropriate may participate in the regularly scheduled project meetings or phone conferences of the participant. The intent of such participation is to facilitate the project and to allow the Government to stay abreast of the project status.

2. The Recipient is responsible for establishing a schedule of technical meetings as required. The Recipient shall notify Government representatives of the established meeting schedule and the proposed subject of each meeting. In the event of changes to the schedule, the Recipient shall notify the Government representatives with as much advanced notice as possible prior to the next scheduled meeting or phone conference.

ARTICLE 7 - PERIOD OF PERFORMANCE

The period of performance of this Agreement shall commence as of the effective date as indicated on the front of this document and shall remain in full force and effect for **twelve (12)** consecutive months in accordance with its provisions, unless sooner terminated as provided for herein or extended by mutual agreement in accordance with the article entitled Modifications.

ARTICLE 8 - CONSIDERATION OF THE PARTIES

Phase 1

(a) The total estimated cost to accomplish the statement of work is \$ over a 12-month period. The parties agree to provide the funding as set forth below. If either the Government or the Recipient is unable to provide its respective total contribution, the other party may reduce/increase its project funding by a proportional amount.

(b) MARAD will pay an amount not to exceed \$22,500.

(c) The Recipient will perform the Statement of Work, which is Attachment 1 to this Agreement, and make contributions of in cash and in kind Services.

ARTICLE 9 - PROJECT MANAGEMENT

Phase 1

1. The following are the list of Project Partners in this project.

MARAD

IRPT Inc.

2. It is the full and complete responsibility of the Recipient to effectively manage this project in accordance with the terms and conditions of this Agreement.

3. The Agreement Officer's Technical Representative shall be responsible for the review and verification of payments to the Recipient and shall have continuous interaction to cause effective collaboration between the Government and the Recipient.

ARTICLE 10 - MODIFICATIONS

1. As a result of meetings, annual reviews, or at any time during the term of the Agreement, research progress or results may indicate that changes would be beneficial to project objectives. Minor project changes do not require prior Government approval. The following are changes that would require Government approval by written modification:

a. Major changes to the Statement of Work that effect Task/Sub-Task Deliverable Milestones.

b. Changes to the budget that affect Payable Milestones.

c. Changes to the schedule that would necessitate an extension to the Period of Performance.

d. Changes to the Teaming Agreement, if such changes substantially alter the relationship or responsibilities between the Recipient and the Project Partners originally agreed upon when the Agreement was executed. This includes the replacement of any Project Partners.

e. Changes that would substantially affect either parties contributions to the project from that which was originally agreed upon when the Agreement was executed.

2. Recommendations for modifications, including justifications to support any changes to the Statement of Work and/or the Payable Milestones, will be documented in a letter and submitted by the Recipient to the Agreement Officer with a copy to the Agreement Officer's Technical Representative. This documentation letter will detail the technical, chronological, and financial

impact of the proposed modification to the research project. The Agreement Officer shall be responsible for the review and verification of any recommendations to revise or otherwise modify the Agreement, Statement of Work, Payable Milestones, or other proposed changes to the terms and conditions of this Agreement.

3. The Government is not obligated to pay for additional or revised Payable Milestones until the Payable Milestone Schedule is formally revised by the Agreement Officer and made a part of this Agreement.

4. For minor or administrative Agreement modifications (e.g., changes in the paying office or appropriation data, changes to the Government personnel identified in the Agreement, etc.) no signature is required by the Recipient.

ARTICLE 11 - AGREEMENT ADMINISTRATION

Administrative and contractual matters under this Agreement shall be referred to the following representatives of the parties:

MARAD: Delores Bryant, Contracting/Agreement Officer
DOT/Maritime Administration
Office of Acquisition, MAR-380
400 Seventh Street, SW., Room 7310
Washington, DC 20590
(202) 366-2660

Technical matters under this Agreement shall be referred to the following representatives:

MARAD: Richard Walker
Agreement Officer's Technical Representative
DOT/Maritime Administration
Office of Port, Intermodal and Environmental Activities
400 Seventh Street, SW., Room 7209
Washington, DC 20590 (202) 366-5474

IRPT Inc.: Dr. Deidre McGowan
IRPT, Inc.
316 Board of Trade Place
New Orleans, LA 07130 (504) 585-0715

Each party may change its representatives named in this Article by written notification to the other party.

ARTICLE 12 - AGREEMENT OFFICER'S TECHNICAL REPRESENTATIVE (AOTR)

(a) Richard Walker is hereby designated as the AOTR for this Agreement and is located at the address given above.

(b) The AOTR is responsible for the technical aspects of the project and technical liaison with the Recipient.

(c) The AOTR is not authorized to make any commitments or otherwise obligate the Government or authorize any changes which affect the price, terms or conditions of this Agreement. Any Recipient request for changes shall be referred to the Agreement/Contracting Officer directly or through the AOTR. No such changes shall be made without the expressed prior authorization of the Agreement/Contracting Officer. The AOTR may designate assistant AOTR(s) to act for him by naming such assistants in writing and transmitting a copy of such designation through the Agreement Officer to the Recipient.

ARTICLE 13 - PAYABLE MILESTONES

Payment under this Agreement will be accomplished at predetermined intervals based on progression of work on this project. These predetermined intervals will be referred to as Payable Milestones. The Payable Milestones shall be (1) \$2,500 for each quarterly progress report; (2) \$5,000 after the receipt of the final marketing plan, and (3) \$10,000 upon completion of the seminar for a total not to exceed \$22,500. If at any time the proposed costs associated with the progression of work change significantly, the Payable Milestones will be modified accordingly by written modification to this Agreement.

ARTICLE 14 - PAYMENT REQUIREMENTS

1. Prior to the submission of invoices to MARAD by the Recipient, the Recipient shall have and maintain an established accounting system which complies with Generally Accepted Accounting Principles, and with the requirements of this Agreement, and shall ensure that appropriate arrangements have been made for receiving, distributing, and accounting for Federal funds. OMB Circular A-110 is incorporated herein by reference and establishes the requirements for financial management and financial reporting to the Government. If the Recipient is a Consortium, the Consortium shall not incur or allocate any direct or indirect costs of its own pursuant to this Agreement.

2. In no case shall the Government's financial liability exceed the amount obligated under this Agreement. No legal liability on the part of the Government for any payment may arise for performance under this Agreement beyond the funds obligated unless and until funds are made available to the Agreement Officer for performance and until the Recipient receives written notice of availability from the Agreement Officer.

3. Invoices shall be submitted in an original and three copies to DOT/Maritime Administration, MAR-333, Room 7325, 400 Seventh Street, SW., Washington, DC 20590. To constitute a proper invoice, the following information and/or attached documentation must be included:

- (a) Name of the business concern and invoice date.
- (b) Agreement number.
- (c) Adequate description of payable milestone.
- (d) Other substantiating documentation or information as required by the Agreement Officer to support completion of such milestone.

4. The Recipient shall maintain adequate records to account for Federal funds received under this Agreement, as well as Recipient funds contributed under this Agreement. The Recipient's relevant financial records are subject to examination or audit by the Government. The Agreement Officer or designee shall have direct access to sufficient records and information of the Recipient, to ensure full accountability for all funding under this Agreement. Such audit, examination, or access shall be performed during normal business hours on normal business days.

ARTICLE 15 - METHOD OF PAYMENT

(a) Payments under this Agreement will be made either by check or by wire transfer through the Treasury Financial Communications System at the option of the Government. Payment will be due on the 30th calendar day after the date of actual receipt of a proper invoice in the office designated to receive the invoice.

(b) The Recipient shall forward the following information in writing to the Agreement Officer not later than 7 days after receipt of notice of award.

(1) Cooperative Agreement Number.

(2) Full name (where practicable), title, phone number, company's IRS Taxpayer ID number, and complete mailing address of responsible official(s), (i) to whom checks are to be sent, and (ii) who may be contacted concerning the bank account information requested below.

(3) The following bank account information required to accomplish wire transfers:

(i) Name, address, and telegraphic abbreviation of the receiving financial institution.

(ii) Receiving financial institution's 9-digit American Bankers Association (ABA) identifying number for routing transfer funds. (Provide this number only of the receiving financial institution has access to the Federal Reserve Communications System.)

(iii) Recipient's name and account number at the receiving financial institution to be credited with the funds.

(iv) If the receiving financial institution does not have access to the Federal Reserve Communications System, provide the name of the correspondent financial institution through which the receiving financial institution receives electronic funds transfer messages. If a correspondent financial institution is specified, also provide:

(A) Address and telegraphic abbreviation of the correspondent financial institution.

(B) The correspondent financial institution's 9-digit ABA identifying number for routing transfer of funds.

(c) Any changes to the information furnished under paragraph (b) of this article shall be furnished to the Agreement Officer in writing at least 30 days before the effective date of change. It is the Recipient's responsibility to furnish these changes promptly to avoid payments to erroneous addresses or bank accounts.

(d) The document furnishing the information required in paragraph (b) and (c) must be dated and contain the signature, title, and telephone number of the Recipient official authorized to provide it, as well as the Recipient's name and Agreement number.

(e) Failure to submit information required by this article could result in delay in processing of invoices for payment.

ARTICLE 16 - INDEMNITY

The Recipient agrees to hold the Government harmless from all liability for the Recipient's own acts and omissions and the results thereof. The Recipient assumes all risk, responsibility, and liability for itself, its agents, staff, employees and research personnel for monetary or other losses to persons, properties or entities resulting in any manner from the conduct

of its operations in which the products and services identified herein are utilized and/or furnished to others.

ARTICLE 17 - SUSPENSION OR TERMINATION

As prescribed by OMB Circular A-110, the following definitions apply under this Article:

Termination - The termination of a grant or other agreement means the cancellation of Federal sponsorship, in whole or in part, under an agreement at any time prior to the date of completion.

Suspension - The suspension of a grant or other agreement is an action by a Federal sponsoring agency that temporarily suspends Federal sponsorship under the grant or other agreement, pending corrective action by the Recipient or pending a decision to terminate the grant or other agreement by the Federal sponsoring agency.

When the Recipient has failed to comply with the terms of this agreement, MARAD may, on reasonable notice to the Recipient, suspend the grant or other agreement, pending corrective action by the Recipient, or a decision by MARAD or the Recipient to terminate in accordance with the provisions listed below for termination for cause or termination for convenience. MARAD shall allow all necessary and proper costs that the Recipient could not reasonably avoid during the period of the suspension provided that they meet the provisions of the applicable Federal cost principles.

MARAD's provisions for the systematic settlement of terminated grants or other agreement include the following:

- (1) Termination for Cause - MARAD may reserve the right to terminate any grant or agreement in whole or in part at any time before the date of completion, whenever it is determined that the Recipient has failed to comply with the conditions of the agreement. MARAD shall promptly notify the Recipient in writing of the determination and the reasons for the termination, together with the effective date. Payments made to the Recipient or recoveries by MARAD under grants or other agreements terminated for cause shall be in accordance with the legal rights and liabilities of the parties.
- (2) Termination for Convenience - MARAD or Recipient may terminate grants and agreements in whole or in part when

both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds by either party. The two parties shall agree upon the termination conditions, including the effective date and, in the case of partial terminations, the portion to be terminated. The Recipient shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. MARAD shall allow full credit to the Recipient for the Federal share of the non-cancelable obligations, properly incurred by the Recipient prior to termination.

ARTICLE 18 - DISPUTES

All disputes of fact or of interpretation under this Agreement not disposed of by mutual agreement shall be decided by the Agreement/Contracting Officer who shall reduce the decision to writing and mail a copy thereof to the Recipient. Within thirty (30) days of receipt of such written decision, the Recipient may appeal in writing to the Associate Administrator for Administration, Maritime Administration. The Associate Administrator for Administration will fix a date for written submissions or oral presentations, or both, by the Recipient and the Agreement/Contracting Officer, or their representatives. The Associate Administrator for Administration shall hand down a written decision which shall be final and conclusive upon the parties as to questions of fact. The Contract Disputes Act of 1977 does not apply to this Agreement. Compliance with this Article does not preclude use of any other legal remedies by the Parties.

ARTICLE 19 - PATENT RIGHTS

A. Definitions

1. "Invention" means any invention or discovery that is or may be patentable or otherwise protectable under Title 35 of the United States Code.

2. "Made" when used in relation to any invention means the conception or first actual reduction to practice of such invention.

3. "Practical application" means to manufacture, in the case of a composition of product; to practice, in the case of a process or method, or to operate, in the case of a machine or system for either Government or Commercial Shipbuilding utilization.

4. "Subject invention" means any invention of a Recipient conceived or first actually reduced to practice in the performance of work under this Agreement.

B. Allocation of Principal Rights

1. The Recipient shall retain the entire right, title, and interest throughout the world to each subject invention consistent with the provisions of 35 U.S.C. 203. The Recipient shall disclose each subject invention to the Government within four months after Recipient acknowledges invention.

2. If the Recipient determines that it does not intend to retain title to any such invention, the Recipient shall notify the Government, in writing, within eight months of disclosure to the Government of such decision. However, in any case where publication, sale, or public use has initiated the one-year statutory period wherein valid patent protection can still be obtained in the United States, the period for such notice may be shortened by the Government to a date that is not more than sixty calendar days prior to the end of the statutory period.

C. March-in Rights

If the Government determines that such action is necessary because the Recipient or assignee has not taken, or is not expected to take within two years from the termination of the Agreement, effective steps to achieve practical application of the subject invention then the Government has the right to require the Recipient, an assignee, or exclusive licensee of a subject invention to grant a nonexclusive license to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Recipient, assignee, or exclusive licensee refuses such a request, the Government has the right to grant such a license itself.

D. Conditions when the Government May Obtain Title

Under the Government's written request, the Recipient shall convey title to any subject invention to the Government if the Recipient fails to disclose or elects not to retain title to the subject invention within the times specified in paragraph C of this Article; provided, that the Government may only request title within sixty calendar days after learning of the failure of the Recipient to disclose or elect within the specified times.

E. Lower Tier Agreements

The Recipient shall include this Article, suitably modified, to identify the Parties, in all subcontracts or lower tier

agreements, regardless of tier, for experimental, developmental, or research work.

ARTICLE 20 - DATA RIGHTS

A. Additional Definitions

"Data", as used in this article, means recorded information, regardless of form or method of recording, which includes but is not limited to technical data, software. The term does not include business sensitive financial, administrative, cost, pricing or management information and does not include subject inventions included under the Article entitled PATENT RIGHTS.

B. Data Rights

The Parties agree that the Government and the Recipient retain full rights to utilize all data gathered during the program, and the contents of the interim and final reports. No information, data or report shall be attributed to MARAD or the Federal Government

ARTICLE 21 - INSPECTIONS

The Government, through any authorized representatives, has the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed hereunder and the premises on which it is being performed. If any inspection or evaluation is made by the Government on the premises of the Recipient or the subcontractor, the Recipient shall provide and shall require all subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the Government representatives in the performance of their duties. All inspections and evaluations shall be performed in such a manner as to not unduly delay the work.

ARTICLE 22 - RETENTION AND CUSTODIAL REQUIREMENTS FOR RECORDS

a. Financial records, supporting documents, statistical records, and all other records pertinent to this Agreement including those of the Recipient and any subcontractors shall be retained for a period of 3 years, following expiration of this Agreement. If any litigation, claim or audit is started before the expiration of the 3-year period, the records shall be retained until all litigations, claims, or audit findings involving the records have been resolved.

b. The retention period starts from the date of the submission of the final expenditure report.

c. The head of the Federal sponsoring agency and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any pertinent books, documents, papers, and records of the Recipient and its subcontractors to make audits, examinations, excerpts and transcripts.

d. Unless otherwise required by law, MARAD shall not place restrictions on the Recipient that will limit public access to the records of the Recipient that are pertinent to this Agreement except when MARAD can demonstrate that such records must be kept confidential and would have been excepted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) if the records had belonged to the Federal sponsoring agency.

ARTICLE 23 - OFFICIALS NOT TO BENEFIT

No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this Agreement, or to any benefit arising from it. However, this provision does not apply to this Agreement to the extent that this Agreement is made with a corporation for the corporation's general benefit.

ARTICLE 24 - COVENANT AGAINST CONTINGENT FEES

The Recipient warrants that no person or agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Recipient for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this Agreement without liability or in its discretion to recover the full amount of such commission, percentage, brokerage or contingent fee.

ARTICLE 25 - PERMITS, LICENSES AND RESPONSIBILITIES

The Recipient shall, without expense to the Government, be responsible for obtaining any necessary licenses and permits and for complying with any Federal, State, and municipal laws, codes, and regulations applicable to performance of any work accomplished under this Agreement. The Recipient shall also be responsible for all damages to persons or property that occur, and shall take proper safety and health precautions to protect the work, the workers, the public and the property of others.

ARTICLE 26 - PAYMENT OF INTEREST ON RECIPIENT'S CLAIMS

If an appeal is filed by the Recipient from a final decision under the Disputes Article, above, denying a claim arising under this Agreement, interest on the amount of the claim finally determined by the Associate Administrator for Administration to be owed by MARAD shall be payable to the Recipient. Such interest shall be at the rate determined pursuant to Public Law 103-160 and shall be computed from the date of the request for decision by the Associate Administrator for Administration.

ARTICLE 27 - EQUAL OPPORTUNITY

During performance of this Agreement, the Recipient agrees as follows:

(1) The Recipient shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.

(2) The Recipient shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to, (i) employment, (ii) upgrading, (iii) demotion, (iv) transfer, (v) recruitment or recruitment advertising, (vi) layoff or termination, (vii) rates of pay or other forms of compensation, and (viii) selection for training, including apprenticeship.

(3) The Recipient shall, in all solicitations or advertisement for employees placed by or on behalf of the Recipient, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(4) The Recipient shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(5) The Recipient shall permit access to its books, records, and accounts by the Government for the purposes of investigation to ascertain the Recipient's compliance with the applicable rules, regulations, and orders.

(6) If the Government determines that the Recipient is not in compliance with this Article or any rule, regulation, or order of the Secretary of Labor, this Agreement may be canceled, terminated, or suspended in whole or in part and the Recipient may be declared ineligible for further Government assistance,

under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Recipient as provided in Executive Order 11246, as amended the rules, regulations, and orders of the Secretary of Labor or as otherwise provided by law.

(7) The Recipient shall include the terms of this Article in every subcontract that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor.

ARTICLE 28 - DEBARMENT AND SUSPENSION

The Recipient shall comply with the non-procurement debarment and suspension common rule implementing Executive Orders 12549 and 12689, "Debarment and Suspension." This common rule restricts sub-awards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

ARTICLE 29 - LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS

(a) Definitions.

"Agency," as used in this article means executive agency as defined in 2.101.

"Covered Federal action," as used in this article, means any of the following Federal actions:

(a) The awarding of any Federal contract.

(b) The making of any Federal grant.

(c) The making of any Federal loan.

(d) The entering into of any cooperative agreement.

(e) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

"Indian tribe" and "tribal organization," as used in this article, have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B) and include Alaskan Natives.

"Influencing or attempting to influence," as used in this article, means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

"Local government," as used in this article, means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

"Officer or employee of an agency," as used in this article, includes the following individuals who are employed by an agency:

(a) An individual who is appointed to a position in the Government under title 5, United States Code, including a position under a temporary appointment.

(b) A member of the uniformed services, as defined in subsection 101(3), title 37, United States Code.

(c) A special Government employee, as defined in section 202, title 18, United States Code.

(d) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, United States Code, appendix 2.

"Person," as used in this article, means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Reasonable compensation," as used in this article, means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

"Reasonable payment," as used in this article, means, with respect to professional and other technical services, a payment

in an amount that is consistent with the amount normally paid for such services in the private sector.

"Recipient," as used in this article, includes the Contractor and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Regularly employed," as used in this article, means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

"State," as used in this article, means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

(b) Prohibitions. (1) Section 1352 of title 31, United States Code, among other things, prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any Federal contract, grant, loan, or cooperative agreement.

(2) The Act also requires Contractors to furnish a disclosure if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.

(3) The prohibitions of the Act do not apply under the following conditions:

(i) Agency and legislative liaison by own employees.

(A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this article, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

(B) For purposes of subdivision (b)(3)(i)(A) of this article, providing any information specifically requested by an agency or Congress is permitted at any time.

(C) The following agency and legislative liaison activities are permitted at any time where they are not related to a specific solicitation for any covered Federal action:

(1) Discussing with an agency the qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities.

(2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(D) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action -

(1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

(3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Pub. L. 95-507, and subsequent amendments.

(E) Only those services expressly authorized by subdivision (b)(3)(i)(A) of this article are permitted under this agreement.

(ii) Professional and technical services. (A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this article, does not apply in the case of -

(1) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

(2) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(B) For purposes of subdivision (b)(3)(ii)(A) of this article, professional and technical services shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable.

Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(C) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.

(D) Only those services expressly authorized by subdivisions (b)(3)(ii)(A) (1) and (2) of this article are permitted under this article.

(E) The reporting requirements of FAR 3.803(a) shall not apply with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

(c) Disclosure. (1) The Contractor who requests or receives from an agency a Federal contract shall file with that agency a disclosure form, OMB Standard Form LLL, Disclosure of Lobbying Activities, if such person has made or has agreed to make any payment using non-appropriated funds (to include profits from any covered Federal action), which would be prohibited under subparagraph (b)(1) of this article, if paid for with appropriated funds.

(2) The Contractor shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under subparagraph (c)(1) of this article. An event that materially affects the accuracy of the information reported includes -

(i) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

(ii) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or

(iii) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

(3) The Contractor shall require the submittal of a certification, and if required, a disclosure form by any person who requests or received any subcontract exceeding \$100,000 under the Federal contract.

(4) All subcontractor disclosure forms (but not certifications) shall be forwarded from tier to tier until received by the prime Contractor. The prime Contractor shall submit all disclosures to the Contracting Officer at the end of the calendar quarter in

which the disclosure form is submitted by the subcontractor. Each subcontractor certification shall be retained in the subcontract file of the awarding Contractor.

(d) Agreement. The Contractor agrees not to make any payment prohibited by this article.

(e) Penalties. (1) Any person who makes an expenditure prohibited under paragraph (a) of this article or who fails to file or amend the disclosure form to be filed or amended by paragraph (b) of this article shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.

(2) Contractors may rely without liability on the representation made by their subcontractors in the certification and disclosure form.

(f) Cost allowability. Nothing in this article makes allowable or reasonable any costs that would otherwise be unallowable or unreasonable. Conversely, costs made specifically unallowable by the requirements in this article will not be made allowable under any other provision.

Attachment 1

STATEMENT OF WORK

(1) Complete Marketing Plan for the Inland River System

Recipient shall identify:

- impediments to increased market share,
- specific market niches,
- additional container-on-barge options,
- appropriate media vehicles.

Develop a marketing plan, based on both the identification of and proposed solutions to the problems outlined above. The Plan shall be completed within one year.

(2) Support the Involvement of More State Departments of Transportation in the Heartland Intermodal Partnership (HIP).

Involve all 24 states in an HIP seminar to generate a combination of support and understanding for cooperative intermodal development. Several state departments of transportation have immediately recognized the potential benefits of HIP and have provided wholehearted support. Several states have been involved peripherally and support HIP but can not / will not send intermodal representatives to participate in the development of the HIP Work Planks. Other states are completely resistant to any idea that their Department of Transportation is anything but a Highway Department. To maximize the use of the excess capacity on the Nation's waterways will require extensive intermodal utilization and expansion.

Deliverables:

Financial Status Report

Interim Technical Progress Reports - end of each calendar quarter

The Final Project Report

All reports shall be submitted in accordance with Article 5-1 of this Cooperative Agreement.